

109TH CONGRESS  
2D SESSION

# S. 2367

To provide a cause of action for United States port operators with respect to the potential change of ownership of a terminal operator to a foreign entity, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 2006

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To provide a cause of action for United States port operators with respect to the potential change of ownership of a terminal operator to a foreign entity, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Local Port Security  
5       Act of 2006”.

6       **SEC. 2. FEDERAL CAUSE OF ACTION ESTABLISHED.**

7       The owner of a United States port may file an action  
8       seeking relief, including nullification of any contractual

1 obligation with any terminal operator within the port, in  
2 any appropriate United States district court if a merger,  
3 acquisition, or takeover transaction would result in a  
4 change in the ownership of the terminal operator, and the  
5 new owner would be a foreign controlled entity. Such relief  
6 may be granted upon a showing by the owner of the port  
7 of a demonstrated increase in the security risk to the port  
8 or the port community as a result of such change in own-  
9 ership.

10 **SEC. 3. REVIEW BY SECRETARY OF HOMELAND SECURITY.**

11       The Secretary of Homeland Security shall review any  
12 proposed change in the ownership of a terminal operator  
13 within a United States port to a foreign controlled entity  
14 to determine the existence of any potential security con-  
15 cerns raised by such change, and shall transmit the find-  
16 ings of such review to the owner of the United States port  
17 and to the President, or the President's designee, for pur-  
18 poses of any investigation under section 721(b) of the De-  
19 fense Production Act of 1950 (50 U.S.C. App. 2170(b)).

20 **SEC. 4. RULE OF CONSTRUCTION.**

21       Nothing in this Act may be construed to affect or  
22 otherwise alter the requirements of section 721 of the De-  
23 fense Production Act of 1950 (50 U.S.C. App. 2170), or  
24 any rule, regulation, or order issued thereunder.

1 **SEC. 5. DEFINITIONS.**

2 As used in this Act—

3 (1) the term “United States port” means all  
4 piers, wharves, docks, and similar structures, adja-  
5 cent to any waters subject to the jurisdiction of the  
6 United States, to which a vessel may be secured, in-  
7 cluding areas of land, water, or land and water  
8 under and in immediate proximity to such struc-  
9 tures, buildings, on or contiguous to such structures,  
10 and the equipment and materials on such structures  
11 or in such buildings; and

12 (2) the term “marine terminal operator”—

13 (A) means the operator of the wharves,  
14 bulkheads, quays, piers, docks, and other berth-  
15 ing locations, and adjacent storage or adjacent  
16 areas and structures associated with the pri-  
17 mary movement of cargo or materials from ves-  
18 sel to shore or shore to vessel, including struc-  
19 tures which are devoted to receiving, handling,  
20 holding, consolidating, and loading or delivery  
21 of waterborne shipments or passengers, includ-  
22 ing areas devoted to the maintenance of the ter-  
23 minal or equipment; and

24 (B) does not include the operator of any  
25 production or manufacturing areas, or any stor-

1           age facility directly associated with any such  
2           production or manufacturing area;

3           (3) the term “port community” means the land  
4           adjacent to and within 10 miles of a United States  
5           port on which persons reside or work who could suf-  
6           fer injury or death in the event of a terrorist attack  
7           on or at the port; and

8           (4) the term “foreign controlled entity” means  
9           any entity in which a foreign entity owns a majority  
10          interest, or otherwise controls or manages the entity.

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